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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTOLIN PALACIOS-RUIZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NOS. 13-CV-00073 BEN
12-CR-3215 BEN-1

**ORDER DENYING
28 U.S.C. § 2255 MOTION**

Petitioner Antolin Palacios-Ruiz moves pursuant to 28 U.S.C. § 2255 for a reduction in his sentence based on his alien status and challenges Bureau of Prisons' policies which preclude him from participating in certain pre-release programs. Both because he waived the right to challenge his sentence and because his Equal Protection argument lacks merit, the Court **DENIES** the motion.

DISCUSSION

I. WAIVER

The Ninth Circuit recognizes strong public policy considerations justifying the enforcement of a defendant's waiver of his right to appeal or collaterally attack a judgment. *United States v. Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant's waiver of his right to appeal, as long as the waiver was "knowingly and voluntarily made" and "encompasses the

1 defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*,
 2 223 F.3d 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266,
 3 1270-71 (9th Cir. 1998)).

4 Petitioner waived his right to collaterally attack his sentence in his plea
 5 agreement. Plea Agreement (Docket No. 14) ¶ XI. The plea agreement states,
 6 "defendant waives, to the full extent of the law, any right to appeal or to collaterally
 7 attack the conviction and sentence." *Id.* Petitioner's knowing and voluntary waiver
 8 of his right to collaterally attack his sentence requires denial of his § 2255 motion.

9 **II. EQUAL PROTECTION**

10 Petitioner filed the present motion under 28 U.S.C. § 2255, but his Equal
 11 Protection challenge to the constitutionality of certain Bureau of Prisons' policies is
 12 better construed as a challenge to the manner in which his sentence is being executed
 13 under 28 U.S.C. § 2241. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir.
 14 2000) (per curiam) (instructing that petitions challenging the "manner, location or
 15 conditions of a sentence's execution must be brought pursuant to § 2241"); *see also*
 16 *Montano-Figuero v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (illustrating that
 17 challenges to Bureau of Prisons' policies are challenges to the execution of an inmate's
 18 sentence). Construing his motion liberally, the Court considers Petitioner's Equal
 19 Protection claim under 28 U.S.C. § 2241. *See Zichko v. Idaho*, 247 F.3d 1015, 1020
 20 (9th Cir. 2001) (noting a court's "duty to construe pro se pleadings liberally").

21 Petitioner claims that Bureau of Prisons' policies that prevent him from
 22 participating in certain programs due to his alien status violate his right to Equal
 23 Protection. However, Bureau of Prisons policies preventing deportable aliens from
 24 participating in certain programs survive constitutional challenge. *Cf. McLean v.*
 25 *Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1999) (finding BOP exclusion of prisoners
 26 with detainers, including INS detainers, from community-based program based on
 27 petitioners' alien status did not violate Equal Protection).

28 Additionally, a number of district courts have found that policies preventing

1 alien prisoners from participating in certain pre-release programs are also justified
2 because the purpose of the program — helping prisoners reenter the community after
3 serving their sentence — is not advanced in the case of prisoners who will be deported
4 upon release. *See Lizarraga-Lopez v. United States*, 89 F. Supp. 2d 1166, 1169-70
5 (S.D. Cal. 2000) (upholding deportable alien's ineligibility for community
6 confinement); *United States v. Rodas-Jacome*, No. 06-CV-1481, 2007 WL 1231630,
7 at *4 (S.D. Cal. Apr. 24, 2007) (upholding restrictions for alien prisoners to obtain
8 "good time" credits in rehabilitation programs). Because deportable alien prisoners
9 pose a greater flight risk and the public policy justifications for pre-release programs
10 are inapplicable, the challenged policies survive constitutional scrutiny and Petitioner's
11 Equal Protection claim fails. The Court also denies relief under § 2241.

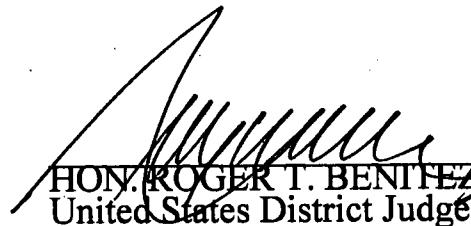
12 The Court **DENIES** a certificate of appealability because the issues are not
13 debatable among jurists of reason and there are no questions adequate to deserve
14 encouragement.

15 **CONCLUSION**

16 Petitioner's motion is **DENIED**. The Clerk shall close case number 13-CV-
17 00073 BEN.

18 **IT IS SO ORDERED.**

19
20 DATED: May 6, 2013

21 
22 HON. ROGER T. BENTEZ
23 United States District Judge

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